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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 8760/2014

MAGNETI MARELLI POWERTRAIN INDIA PVT LTD .... Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate with Mr. Neeraj Kr. Jain and Mr. Vaibhav Kulkarni, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME-TAX ..... Respondent

Through: Mr. Raghvendra Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **06.02.2017**

The petitioner is aggrieved by the notice issued to it under Section 147/148 of the Income Tax Act, 1961 proposing to reopen the assessment for AY 2010-11. The "reasons to believe" cited in support of the notice read as follows: **-**

> *"2. It has been noticed that during the period relevant for the A.Y.2009-10, the assessee company had made transactions with its associate enterprise within the meaning of section 92B of the Income Tax Act, 1961, the value of which exceeded Rs.15 crores. Hence, reference to the Transfer Pricing Officer had been made with the prior approval of the Commissioner of Income Tax, Delhi-II, New Delhi. The Transfer Pricing Officer vide order dated 29.01.2013 passed under Section 92CA (3) of the Act, 1961 for the A.Y. 2009-10 observed that the value of technical payment in uncontrolled conditions was*

NIL under CUP and accordingly directed that the amount of Rs.38,58,80,000/- paid by the assessee to its associate enterprise for technical knowhow be added to the income of the assessee. As per the directions of the TPO a draft assessment order u/s 144C of the I.T. Act for the A.Y.2009-10 has already been passed adding the above amount of Rs.38,58,80,000/-. The draft order so passed has been served upon the assessee.

3. The assessee furnished particulars relating the international transactions in Form No.3CEB on 15.10.2010 for the A.Y.2010-11. As per the 3CEB report the assessee company, during the period relevant for the A.Y.2010-11 has inter-alia, made payment of Rs.37,66,99,739/- to its associate enterprise namely M/s. Magneti Marelli S.p.A. Italy on account of purchase of technical knowhow. As stated in Para 2 above, the value of technical payment in uncontrolled conditions was determined by the TPO as NIL under CUP for the A.Y.2009-10 and he accordingly directed that the amount of Rs.38,58,80,000/- paid by the assessee to its associate enterprise for technical knowhow be added to the income of the assessee. The assessee, for the A.Y.2010-11 has made payment of Rs.37,66,99,739/- to its associate enterprise for purchase of technical knowhow as against Rs.38,58,80,000/- which was directed to be added to the total income of the assessee by the Transfer Pricing Officer (TPO). It has been noticed that reference to the TPO has not been made for the A.Y.2010-11 although the value of international transactions exceeded Rs.15 crores. Therefore, I have reason to believe that income of Rs.37,66,99,739/- which represents payment made by the assessee to the associate enterprise on account of purchase of technical knowhow, has escaped assessment due to non reference of the case to the TPO for the A.Y.2001-11.

4. For the reasons mentioned above, notice under section 148 of the Income Tax Act, 1961 is issued for the A.Y.2010-11 in the case of M/s Magneti Marelli Powertrain India Pvt. Ltd."

The petitioner's counsel submits that the notice cannot be sustained and relies upon the decision of this Court in *CIT v. Cheil Communications India Pvt. Ltd.* 354 ITR 549 (Del) and *CIT v. Batra Bhatta Co.* 321 ITR 526 (Del) to contend that under similar circumstances the exercise of power under Section 147/148 was successfully challenged. It was also submitted that the *rationale* for reopening is no longer valid given that for AY 2009-10 the Revenue's contentions were by and large held to be not justified by this Court which remitted the matter to the TPO in *Magneti Marelli Power Train India Pvt. Ltd. v. Dy. Commissioner of I.T.* (2016) 389 ITR 469 (Delhi).

Counsel for the Revenue opposes the proceedings and contends that by reasons of First Explanation to Section 147, the justification for the notice, i.e., escapement of income is sufficient. He points out that "reasons to believe" in support of the notice expressly mentioned that the AO had passed the order completing the assessment for AY 2009-10 on 19.01.2013.

This Court has considered the submissions and the materials on record. The judgments cited on behalf of the petitioner, in our opinion, are not apt. In the present instance, the AO issued notice and indicated in support thereof - in the "reasons to believe" the possibility of escapement on the ground that an identical transaction had resulted in additions for the previous year, i.e., AY 2009-10: more crucially that assessment was completed after the framing of the assessment under Section 143 (1) in the year in question, i.e., on

12.07.2011. In both the cases cited this was not the position.

Even otherwise, the Court is of the opinion that as to the submission by the assessee that for AY 2009-10, the Revenue's contentions were not accepted *per se* cannot be a ground for quashing the Section 147 notice. The reasons for this conclusion are that notice is based upon the situation prevailing in the facts on the record on the date it is issued. In the present case undoubtedly on one issue, the matter was restored for AY 2009-10 to the AO. However, having regard to the nature of the power under Section 147/148 which is of the widest amplitude, it would be hazardous for the Court to set aside or quash the notice which cites one reason. In other words, amplitude of the power under Section 147 itself is a check which should caution the Court from precluding the Revenue's enquiry into a reassessment proceeding which might otherwise be valid.

In the light of the above discussion, the Court is of the opinion that there is no infirmity in the order; at the same time, the AO would have to take into consideration the assessee's submissions with respect to the matters covered by the judgment in *Magnetti Marelli* (supra) dated 25.10.2016.

The writ petition is dismissed but subject to the above observations.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 06, 2017
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